

Pursuant to Ind. Appellate Rule 65(D),  
this Memorandum Decision shall not be  
regarded as precedent or cited before any  
court except for the purpose of  
establishing the defense of res judicata,  
collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

**JOSEPH F. THOMS**  
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**GARY DAMON SECREST**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

MICHAEL MCDOWELL,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 49A02-0601-CR-14

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Becky F. Pierson-Treacy, Judge  
The Honorable Patrick Murphy, Master Commissioner  
Cause No. 49F19-0508-CM-142995

---

**September 12, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Michael McDowell (“McDowell”) appeals from his conviction of criminal trespass as a class A misdemeanor, after a bench trial.

We affirm.

## ISSUE

Whether the evidence is sufficient to support McDowell’s conviction.

## FACTS

At approximately 7 a.m. on August 19, 2005, Officer Richard Weaver of the Indianapolis Police Department was on duty patrolling in an east side neighborhood, conducting narcotics evictions of individuals living in residences where “narcotics [had been] discovered.” (Tr. 5). The narcotics evictions entailed “begin[ning] the eviction process of those individuals, to clear out the problem house.” *Id.* During these patrols, Officer Weaver would go to the residences to determine whether those individuals “were in the process of moving or . . . [he would] notify them [that] they would be evicted.” *Id.* The property located at 41 North Temple Street was listed as one of the residences that were to be vacated.

As Officer Weaver drove by 41 North Temple Street, he observed a female sitting on the porch with the front door partially open. Officer Weaver immediately approached the residence and asked the female why she was there. She stated that she was waiting for a ride. Officer Weaver proceeded with his investigation due to the property being unsecured. He entered the residence and saw McDowell “asleep on the couch in the front

room of the residence.” (Tr. 12). At the same moment, Officer Weaver “heard a loud crash” which turned out to be a man jumping out of the window of the residence. Id.

In response to the loud noise, Officer Weaver instantly went to the room from where the noise had come and observed a woman sitting on a bed. Officer Weaver ordered McDowell and the woman to stand up and show their hands. Both were asked if they knew the owners of the property. McDowell said he did not know who owned the property. Officer Weaver secured the residence and contacted the property manager. McDowell was then arrested.

On August 19, 2005, the State charged McDowell with criminal trespass as a class A misdemeanor. McDowell was tried before the bench on November 3, 2005; he did not testify. At trial, the State entered into evidence a certified public record showing that Temple Trust owned the property. Anthony Braden, an independent contractor hired by Temple Trust to clear the property, confirmed that Temple Trust owned the property. McDowell was found guilty as charged.

### DECISION

McDowell argues that the evidence was insufficient to sustain his criminal trespass conviction. Specifically, he claims that there was inadequate proof that he knowingly or intentionally entered the property of another, without consent. In addition, McDowell contends that Braden’s testimony was incredibly dubious and uncorroborated. We disagree.

In review of a sufficiency claim, this court does not reweigh the evidence nor do we judge witness credibility; we only contemplate the evidence and any reasonable

inferences drawn therefrom most favorable to the verdict. Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005). The conviction will be affirmed if there is probative evidence supporting each element of the crime from which a reasonable trier of fact could find the appellant guilty beyond a reasonable doubt. Id.

To convict McDowell of the offense of criminal trespass as a class A misdemeanor, the State must establish that he: (1) knowingly or intentionally; (2) interfered with the possession or use of property of another person; (3) without the person's consent. See Ind. Code § 35-43-2-2(a)(4). A person engages in conduct "knowingly" if he or she is aware of a high probability that he or she is doing so. I.C. § 35-41-2-2(b). A person engages in conduct "intentionally" if it is his or her conscious objective to do so. Id.

We find McDowell's lack of *mens rea* argument to be flawed. He asserts that the State did not prove the knowingly or intentionally element of criminal trespass. The evidence is undisputed that the police found McDowell asleep at 41 North Temple. Officer Weaver testified that when he asked McDowell who was the owner of the residence, McDowell stated he did not know. Without more, if McDowell did not have knowledge of who owned the property, it could be reasonably inferred that he could not have obtained permission from the owner to be in the residence. As a result, we agree with the State that the trial judge could have reasonably inferred that McDowell did not have the owner's consent to be present at the property.

In addressing McDowell's challenge to Braden's testimony, the standard of review in the application of the "incredible dubiousity" doctrine is that "we [do] not impinge on

the [fact finder]'s resolution of . . . credibility [issues] unless confronted with testimony of inherent improbability, or coerced, equivocal, wholly uncorroborated testimony of incredible dubiousity.” Johnson v. State, 704 N.E.2d 159, 161 (Ind. Ct. App. 1999). Only “[w]hen a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence, a defendant's conviction may be reversed.” Frye v. State, No. 49A02-0507-CR-669, slip op. at 7 (Ind. Ct. App. July 18, 2006). However, the application of this rule is rare and is limited to cases where the sole witness' testimony is so inherently dubious or improbable that no reasonable person could believe it. Id.

The State presented undisputed proof of ownership when it entered into evidence a certified public record showing Temple Trust as the owner of the property at 41 North Temple. Braden’s testimony was not necessary to establish ownership of the residence when he testified that he was hired by Temple's agent to clear the property. Thus, we find that Braden’s testimony was not wholly uncorroborated, nor was it incredibly dubious. Therefore, the evidence was sufficient to support the verdict that McDowell committed trespass as a class A misdemeanor, by knowingly entering the property of another without the consent of Temple Trust or its agents.

Affirmed.

RILEY, J., and VAIDIK, J., concur.